

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 705

COMPETITION IN THE RAILROAD INDUSTRY

230692

**SUPPLEMENTAL COMMENTS OF
CSX TRANSPORTATION, INC.**

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Peter J. Shudtz
Paul R. Hitchcock
John P. Patelli
Kathryn R. Barney
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

G. Paul Moates
Paul A. Hemmersbaugh
Matthew J. Warren
Marc A. Korman
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for CSX Transportation, Inc.

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Pursuant to the Board's June 30, 2011 order in the above-captioned proceeding, CSX Transportation, Inc. ("CSXT") respectfully submits these Supplemental Comments to respond to questions and issues raised at the June 22-23, 2011 public hearing. CSXT joins in the Supplemental Comments of the Association of American Railroads and provides these further responses to certain questions and issues discussed at the hearing.

The record in this proceeding is voluminous. The written record includes scores of substantive comments, not to mention the hundreds of form letters submitted late in the procedural schedule by certain shipper interests.¹ And the Board heard oral testimony from fifty witnesses during the two-day hearing. But what has been most remarkable in this proceeding is not the amount of ink spilled and breath spent in arguments about whether the Board should make it easier for shippers to impose forced access or forced interchange arrangements on unwilling carriers, but rather what has not been said in all that written and oral testimony. The record is almost completely devoid of specific and detailed evidence proving that there is a lack of competition in the rail industry sufficient to justify a massive overhaul of the regulatory system. What has been extensively documented is that the regulatory balance struck by the

¹ As of July 25, 2011, the service list in this proceeding listed 864 individuals or entities who had filed some form of comment or letter in the Ex Parte No. 705 docket.

Interstate Commerce Commission and the Board in the wake of the Staggers Act has been an unqualified success²; that intramodal and intermodal competition remain vigorous³; that railroads continue to have a vital need for adequate revenues to fund essential infrastructure maintenance and improvements⁴; that allowing forced access and forced interchange would significantly degrade service quality⁵; that the Board does not have statutory authority to enact sweeping

² See, e.g., Initial Comments of the Association of American Railroads at 12-22 (describing the success and benefits of the Board's current approach); Initial Comments of Canadian Pacific Railway Company at 12-15 (documenting the success of the Staggers Act including an overall decline in rail rates); Comments of Union Pacific Railroad Company, Verified Statement of James R. Young at 6-11 (linking passage of the Staggers Act with improved railroad finances, increased investment in the network, and improved service); Comments of the Florida Department of Transportation at 1 (reciting Florida's rail successes since the passage of the Staggers Act); Comments of the City of Danville Office of Economic Development at 1 ("The Staggers Rail Act has proven its value to the economic vitality of localities across the country.").

³ See, e.g., Initial Comments of the American Short Line and Regional Railroad Association at 3 ("For the past thirty years, competition in the railroad industry, both between railroads themselves and between railroads and other modes of transportation, predominantly trucks and barges, has been vigorous and ubiquitous."); Comments of Consol Energy at 1 ("Since the passage of the Staggers Act in 1980, the railroads have evolved from being an industry in serious decline to an industry that is competing in the freight transportation world."); Initial Comments of BNSF Railway Company at 1 ("[T]here is substantial competition among the railroads and among other modes for shippers' traffic. Markets are working."); Comments of the Ohio Rail Development Commission at 1 ("Deregulation of railroads has created one of the most efficient, competitive, safe and reliable multi modal transportation systems in the history of our nation."); Comments of South Milford Grain Company, Inc. at 1 ("Our company requires and receives timely, competitive rail service for movement of unit grain trains.").

⁴ See, e.g., Initial Comments of Canadian Pacific Railway Company at 33-35 (describing increased demand for freight rail service and explaining that "rail capacity must be expanded"); Comments of Senator Mark Warner at 1 ("[I]t is imperative that continued reinvestment be encouraged."); Comments by Chairmen and Ranking Members of the House Committee on Transportation and Infrastructure and Subcommittee on Railroads, Pipeline Safety & Hazardous Materials at 1 ("Any policy change made by the STB which restricts the railroads' abilities to invest, grow their networks and meet the nation's freight transportation demands will be opposed by the Committee."); Reply Comments of the Association of American Railroads at 23-24 (discussing the need for ongoing investments in U.S. freight rail infrastructure).

⁵ See, e.g., Opening Comments of Norfolk Southern Railway Company, Verified Statement of Mark D. Manion at 20-22 (describing the operational impacts of forced interchange on the rail network); Opening Comments of Union Pacific Railroad Company, Verified Statement of Lance M. Fritz at 17-27 (same); Initial Comments of the Kansas City Southern Railway Company at

changes to a regulatory system that was ratified by Congress in the Interstate Commerce Commission Termination Act of 1995 (“ICCTA”)⁶; and that the vast majority of legislators who have participated in this proceeding have urged the Board not to change its current competition-related policies.⁷

A narrow group of shippers – primarily consisting of certain coal and chemicals shippers – has attempted to demonstrate the need for sweeping regulatory changes with what might be described as “trial by anecdote.” In lieu of actual, supported facts or evidence demonstrating a need for a new regulatory system, these shippers offered a collection of largely anonymous and ambiguous references to rates they think are “too high,” vaguely described carrier conduct that they deem “uncompetitive,” and the alleged need for the Board to impose forced access remedies to give a minority of shippers more leverage to extract lower rail rates. The Board cannot and should not take action based on this amorphous and unsupported testimony.

12-16 (detailing potential service disruptions of forced access or forced interchange); Comments of Robindale Energy Services, Inc. at 1 (“We are very concerned that allowing customers to segment routes or forcing railroads to provide access to one another will have adverse consequences on our shipments. The difficulties of operating in the Eastern coal fields and the capacity limitations would make it extremely difficult, if not impossible, for railroads to coordinate operations.”); Comments of Interdom Partners, Ltd. at 1 (“[W]e are concerned that changes in the rules could result in service disruptions that would adversely affect all shippers.”).

⁶See, e.g., Opening Comments of Norfolk Southern Railway Company at 14-29 (describing Congress’s ratification of the Board’s competitive access rules and repeated rejection of legislation altering them); Initial Comments of the Association of American Railroads at 24 (ICC and STB policies have “been consistently affirmed and endorsed by reviewing courts . . . [and] should not be changed absent a clear directive from Congress.”); Initial Comments of Canadian Pacific Railway Company at 5 (“The Board’s current regulatory policies can be replaced only if Congress chooses to alter the statutory framework upon which those policies are founded.”).

⁷See, e.g., Comments of: Chairmen Mica (FL) and Shuster (PA) and Ranking Members Rahall (WV) and Brown (FL); Rep. Sam Graves (CA); Reps. Altmire (PA) and Holden (PA); Rep. Costello (IL); Rep. Diaz-Balart (FL); Sens. Isakson (GA) and Chambliss (GA); Rep. Granger (TX); Sen. Johanns (NE); Sen. Kyl (AZ); Rep. Miller (FL); Rep. Miller (CA); Sen. Moran (KS); Rep. Rigell (VA); Rep. Terry (NE); Sen. Warner (VA).

At bottom, these shippers' lament boils down to a single proposition: there is something "wrong" about the fact that shippers served by more than one railroad tend to have more competitive rail transportation options and more ability to negotiate lower rates than shippers served by only one railroad, and the Board should attempt to remedy this "problem" through regulations forcing railroads to give their competitors access to the railroads' private facilities. But the fact that railroads differentially price their services based on relative demand elasticity is not a problem that needs to be remedied. It is a fundamental feature of modern railroad economics and the post-Staggers regulatory system, which has been affirmed and re-affirmed by Congress.⁸ It is worth noting again that a significant number of U.S. Representatives and Senators have urged the Board not to make substantial changes to its competition-related rules, and that these legislators far outweigh the few who testified in support of the shippers seeking regulatory changes.⁹ Indeed, over a hundred rail customers supported railroads and other interested parties in urging the Board to adhere to its current regulatory policies, and several of those customers took the time to appear at the hearing.¹⁰

⁸ See *Major Issues in Rail Rate Cases*, Ex Parte No. 657 (Sub-No. 1) (Oct. 30, 2006) at 20 (demand-based differential pricing is a "core regulatory principle" that "follow[s] the directive from Congress in the Staggers Rail Act of 1980"); *Union Pac. R.R. Co. v. STB*, 628 F.3d 597, 600 (D.C. Cir. 2010) ("By statute, railroads are authorized to engage in a certain amount of demand-based differential pricing in order to earn 'adequate revenues'").

⁹ The testimony of some of those legislators that the Board needs to act because Congress has chosen not to enact legislation that would change the regulatory framework has matters precisely backwards. See Testimony of Senator Rockefeller (STB Hearing File 1, 02:04:27). On the contrary, the Board should be especially reluctant to impose sweeping regulatory changes in light of Congress's repeated, well-informed decisions to leave current regulatory policies in place.

¹⁰ The claims of some witnesses advocating regulatory changes to represent the views of all "shippers" are not accurate, and the Board should recognize that significant numbers of rail customers do not agree with the narrow shipper interests supporting forced access and forced interchange regulations.

The attempt by some shippers to claim that creating a forced access or forced interchange regulatory system would constitute “deregulation” is a semantic trick reminiscent of George Orwell’s *1984*. Only in an Orwellian world would government intervention forcing a private entity to provide its competitors access on demand to its private property, infrastructure, and facilities be described as “de-regulation.” Congress’s purpose in Staggers and ICCTA was to replace a system in which the agency had a hand in regulating nearly all rates with a system in which railroads would have pricing discretion – unless a shipper without competitive options proves that a particular rate is unreasonably high. By seeking regulatory changes that would allow vast numbers of shippers to obtain “competitive access” without making any showing of an abuse of market power, these shippers would re-create a system that threatens to inject the agency in many hundreds of disputes over the availability of and appropriate pricing for forced access to particular destinations. Calling that proposal “deregulation” is utter nonsense.

Through its comments and testimony and those of the Association of American Railroads, CSXT has offered substantial legal and factual reasons why the Board should not alter its competition-related policies, and CSXT will not reiterate those reasons here. Rather, CSXT focuses these supplemental comments on certain issues and questions that arose during testimony at the June 22-23 hearing. Section I responds to shipper testimony about an alleged lack of competition by rail carriers and business practices that supposedly demonstrate a lack of competition. Section II addresses shippers’ claims that the rate reasonableness complaint process is somehow flawed and that these alleged flaws require the Board to impose competitive access remedies as an alternative to requiring shippers to demonstrate that a particular rate is unreasonably high. Section III responds to Commissioner Mulvey’s questions about whether CSXT recently has reduced the number of CSXT customers open to reciprocal switching, and

confirms that CSXT has not closed any customer locations to reciprocal switching in recent years. Finally, Section IV responds to certain issues raised during the testimony of chemicals shippers.

I. CSXT VIGOROUSLY COMPETES WITH OTHER RAILROADS AND OTHER MODES OF TRANSPORTATION.

Many of the anecdotes that certain shippers cited in their testimony suggested that railroad business practices and negotiating tactics somehow prove a lack of competition. These anecdotes cannot bear the weight these shippers place on them. As CSXT CEO and President Michael Ward made clear in his testimony, CSXT vigorously competes for traffic in the marketplace. CSXT competes against motor carriers to serve customers through direct rail and rail-truck transload options. CSXT competes against waterborne barge and vessel transportation where that is an option (as it often is in the states where CSXT operates). CSXT competes against pipeline transportation where that is viable. And CSXT competes against other rail carriers, including Norfolk Southern, Canadian National, Canadian Pacific, and a host of regional and short-line carriers, and wins business from those competitors whenever it can. And likewise CSXT sometimes loses business to motor carriers, vessels, barges, pipelines, and other railroads. The market is fluid, and competition is vigorous. It is certainly true that CSXT has many longtime customers whose geographic location may give CSXT a leg up on its competition – just as other transportation providers have legacy customers for whom they may have some natural advantages over other providers. But successfully winning and keeping business in a competitive market doesn't mean that competition has ceased to exist.

Indeed, this vigorous modal competition exists for many of the supposedly “captive” shipper facilities discussed at the hearing. For example, both PPG Industries, Inc. (“PPG”) and Senator Rockefeller discussed an allegedly “captive” PPG facility at Natrium, WV. But what

PPG failed to mention is that its Natrium facility is located on the Ohio River and has ready access to barge transportation. The Board has recognized that this barge transportation option is effective competition to rail transportation. In one of the *DuPont v. CSXT* cases the Board found that the regular use of barges to ship chlorine traffic between Natrium and New Johnsonville, TN precluded a finding that CSXT possessed market dominance over that movement. See *E. I. du Pont de Nemours v. CSX Transp., Inc.*, STB Docket No. 42100, at 4-5 (June 30, 2008).

Several shippers testified that railroads' behavior when negotiating contracts or discussing new business proved a lack of competition.¹¹ To the extent that these shippers intended to refer to CSXT, those claims are not true. Some shippers claimed that railroads approach contract negotiations with a "take it or leave it" attitude. See, e.g., Testimony of Interested Parties, STB Hearing File 1 at 38:30, ("When a contract is offered...it's 'take it or leave it.'"); Testimony of National Industrial Transportation League, STB Hearing File 1 at 47:45 ("[T]he railroads often are unwilling to engage in meaningful negotiations [M]any railroads simply present shippers with 'take it or leave it' terms."").¹² That is certainly not how CSXT negotiates with its customers. Indeed, CSXT has negotiated contracts with several of the customers who vocally complained about railroads' alleged "take it or leave it" approach, and CSXT's contracts are often the result of negotiations that stretched over many months and involved considerable give and take. It is certainly true that CSXT may have bottom line target rates and terms for a particular negotiation and might not be willing to accept certain terms. Customers likewise will often approach a negotiation with a bottom line target in mind, and it is

¹¹ The Board lacks jurisdiction over rail transportation contracts and has no authority to opine on whether particular contracts or particular negotiating tactics are reasonable or unreasonable. Nevertheless, because several shippers' testimony cited contract negotiations as supposed evidence of a lack of competition, CSXT is providing a response to these claims.

¹² Because a transcript of the public hearing is not yet available, citations to testimony are made to the archived video files available on the Board's website.

not at all uncommon for a customer to tell CSXT that if it does not accept particular contract terms the customer will pull its business from CSXT or pursue a rate reasonableness case. There is nothing unusual about this – it is how arms-length business negotiations are conducted in the real world. And the fact that CSXT and its customers sometimes engage in hard bargaining over contracts certainly does not show that CSXT is “not competing” in the marketplace.

Other shippers testified that it was somehow inappropriate for rail carriers to seek to negotiate contracts for a shipper’s full book of business and suggested that shippers would be more willing to pursue rate reasonableness complaints if railroads would offer contracts for only a portion of shippers’ business. *See* Testimony of Robin Burns on behalf of Occidental Chemical Co. (STB Hearing File 3, 02:00:36). CSXT certainly looks at the whole picture when negotiating rail transportation contracts, and CSXT believes that most of its customers similarly focus on the overall economic bottom line. Moreover, CSXT often offers volume discounts to shippers as an incentive to achieve the best overall economic value to CSXT and its customers. If a customer asks for a contract for fewer lanes of business (and thus offers less volume to CSXT), then CSXT’s contract proposals may be adjusted to offer less discounts on that lower volume. One would expect that Occidental and other chemicals manufacturers similarly are willing to offer better prices to their customers in exchange for commitments to purchase higher quantities. Offering better prices for more volume is Business 101 – it certainly is not evidence that railroads are “refusing to compete.”

Still other shippers complained that there was something improper about railroads asking customers requesting rates to transload facilities for information on the final destination and expected truck volumes. *See* Testimony of F. Fournier on behalf of M&G Polymers USA, LLC (“M&G”) (STB Hearing File 3 at 04:06:00). Again, the fact that railroads sometimes ask

customers for more information about potential future movements is a commonplace business practice – not evidence of some secret desire not to compete with other railroads. CSXT often asks customers if they are willing to provide information on the ultimate destination of movements to a CSXT-served transload facility, because this information helps CSXT better determine how to price and plan for those movements. Also, customers do not always know if a destination is rail served and do not always know the ideal transloading location. If CSXT has information on the final destination, it is sometimes able to identify a competitive rail direct route or a better transload location. Asking for more information is good business practice that often benefits both CSXT and its customers.

* * *

In short, CSXT vigorously competes in the transportation marketplace, and none of the anecdotes shippers cited at the hearing demonstrates the contrary.

II. SHIPPERS HAVE AMPLE OPPORTUNITY TO RESOLVE ANY COMPLAINTS ABOUT ALLEGEDLY UNREASONABLY HIGH RAIL RATES UNDER THE BOARD'S PROCEDURES FOR RATE REASONABLENESS CASES.

The Board's questioning at the hearing made abundantly clear that the calls for a forced access or forced interchange regime are primarily motivated by a single concern: shippers want to pay lower rail rates.¹³ No shipper claimed that forced access was necessary to improve rail

¹³ See, e.g., STB Hearing File 1 at 3:58:01 (exchange between Chairman Elliott and Wayne Hurst (Nat'l Ass'n of Wheat Growers) (emphasis added):

Chairman Elliott: What would you rather have? Would you rather have more access or would you rather have more aggressive rate proceedings that maybe gave you a better avenue to come to the Board? Maybe there's something that's less expensive or something without so much resources involved? I'm just kind of curious what the shippers think on that?

Mr. Hurst: From our perspective, you know, it's ultimately, just, I think better rates frankly. That's the bottom line. You know, right now I think most of us

service (and indeed all the evidence in the record indicates that forced access could only harm service). Of course, any shipper of regulated traffic that believes its rate is unreasonably high has a ready remedy – file a rate complaint before the Board. Several shippers argued during testimony that the Board’s procedures for adjudicating rate reasonableness complaints were inadequate, and they suggested that imposing a forced access regime was a better mechanism to restore reasonable rail rates. *See, e.g.,* Testimony of C. Warfel on behalf of the National Industrial Transportation League (STB Hearing File 1 at 00:47:05). But once again, the shippers’ rhetoric about the alleged deficiencies of the rate reasonableness case process does not accord with reality: The Board’s rate reasonableness processes are robust, cost-effective, and efficient, and provide the appropriate remedy for any shipper who thinks its rates are unreasonably high.

In recent years the Board has taken substantial steps to improve access to rate reasonableness remedies. In Ex Parte No. 657 it simplified and streamlined procedures for stand alone cost cases. *See Major Issues in Rail Rate Cases*, Ex Parte No. 657 (Sub-No. 1) (Oct. 30, 2006). In Ex Parte No. 646 the Board created two new simplified methodologies for smaller-value rate cases. *See Simplified Standards for Rail Rate Cases*, Ex Parte No. 646 (Sub-No. 1) (Sept. 5, 2007). The Board has substantially lowered filing fees for rate cases, which are now only \$350 for SAC and Simplified SAC cases and \$150 for Three Benchmark cases. *See Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2007 Update*, Ex Parte No. 542 (Sub-No. 14) (Jan. 24, 2008) (lowering filing fee for SAC cases from \$178,200 to \$350 and filing fee for Simplified SAC cases from \$10,600 to \$350); *see also Regulations Governing Fees for Services*, Ex Parte No. 542 (Sub-No. 18) (July 7,

are being served fairly well by the railroads and they’re efficient and they’re our partners. But we’re paying for it.

2011) (setting forth current fee structure for complaints). And the Board has promoted mediation of rate disputes through the Office of Consumer Assistance and through the mandatory mediation process for rate cases. CSXT has participated in a number of Board-supervised mediations and has found them to be a useful and effective way to resolve parties' differences.

Despite these reforms, several shippers criticized the rate reasonableness case process in their testimony and argued that the Board should change its competitive access rules to give shippers a mechanism to obtain lower rail rates without having to file a rate complaint. Shippers claim that the rate reasonableness process is too expensive, takes too long, and imposes unfair burdens. None of these complaints have any merit.

A. Litigation Costs for Rate Reasonableness Cases Are Not Unreasonably High.

First and most prominently, several shippers made extravagant claims about the costs of rail rate litigation; one shipper asserted that it cost \$20 million to litigate a SAC case. *See* Testimony of M. McGarry on behalf of PPG (STB Hearing File 3 at 02:16:29). The Board's questioning revealed that most of these cost estimates were grossly exaggerated by shippers' inclusion of the challenged tariff rates in their alleged estimates of litigation costs. As Commissioner Mulvey pointed out, shippers are entitled to reparations with interest for payments of any tariff rate that they can prove exceeded a reasonable maximum. An expense that will be fully reimbursed with interest for any successful rate litigant cannot reasonably be included in a calculation of litigation costs. (And if a shipper fails to demonstrate that a rate is unreasonable, then it can hardly claim that its payment of those lawful rates was an unwarranted "cost of litigation.")¹⁴ As discussed below, shippers' suggestion that the Board should consider

¹⁴ Moreover, it is not at all clear what baseline rate shippers are using to calculate the amount of "inflation" in the allegedly high tariff rates being paid during the pendency of a rate complaint.

suspending rate increases during the pendency of rate reasonableness complaints is precluded by the plain language of the Interstate Commerce Act. *See infra* at § II.B.

The Board has previously found that the total costs for a complainant to litigate a full SAC case are less than \$5 million, and that the costs to litigate a case under the *Simplified Standards* are substantially lower: \$1 million for a Simplified SAC case and \$250,000 for a Three Benchmark case. *See Simplified Standards*, Ex Parte No. 646 (Sub-No. 1) at 30-32, 92-94. These cost estimates were developed after a notice-and-comment rulemaking that carefully considered both shipper evidence estimating litigation costs and testimony from shippers about the actual cost of litigating a SAC case.¹⁵ And those estimates were conservatively high; the Board made clear that it believed that the actual costs of litigation should be significantly lower.¹⁶ There is no reason for the Board to question those carefully-developed findings based on a few unsupported and off-the-cuff remarks asserting higher litigation costs.

It appears that at least some shippers calculated “inflation” based on the rates in the last expired contract with the carrier. There are a host of reasons why a contract rate would be lower than a tariff rate, including the fact that contract rates typically are offered in exchange for volume and other commitments. Moreover, contracts often cover multiple years, and a contract rate based on a contract negotiated several years earlier may no longer reflect current market rates. For these reasons, the difference between a tariff rate and an expired contract rate certainly cannot be treated as a presumptively unreasonable “inflation” that counts as a cost of litigation.

¹⁵ *See id.* at 30 (citing testimony from shipper counsel that actual cost of litigating full-SAC case before adoption of *Major Issues* simplifications was \$4.5 million); *id.* at 92-94 (basing estimates of costs of Simplified SAC and Three Benchmark cases on testimony presented by shippers). Indeed, the Board increased its litigation cost estimates in direct response to comments from shippers. The Notice of Proposed Rulemaking for *Simplified Standards* estimated the cost of bringing a Full SAC case to be less than \$3.5 million and the cost of a Simplified SAC presentation to be only \$200,000. *See NPRM, Simplified Standards for Rail Rate Cases*, Ex Parte No. 646 (Sub-No. 1), at 36 (July 26, 2006).

¹⁶ *See Simplified Standards*, Ex Parte No. 646 (Sub-No. 1), at 30-31 (Sept. 5, 2007) (stating that comments “confirm our belief that the changes recently adopted in *Major Issues* will serve to lower [SAC] litigation expenses” from the \$4.5 million spent by a recent SAC complainant); *id.* at 94 (“We anticipate that the actual cost to litigate a Three-Benchmark case, particularly once a body of precedent is developed to guide the analysis, should be far less than \$250,000.”).

Indeed, the few specific figures cited by shippers complaining about the costs of litigating rate reasonableness cases demonstrate that the Board's previous estimates of the cost of a full SAC case are accurate. M&G Global Marketing and Sales Director Fred Fournier testified that to date M&G had spent \$2.6 million on legal and consulting fees in its stand-alone cost case. *See* STB Hearing File 3 at 4:40:18. What Mr. Fournier did not say is that at this point M&G's counsel and consultants have already completed a majority of the work that a complainant must perform in a SAC case, including the drafting of the complaint (and several amended complaints); the entirety of discovery (including an unsuccessful M&G motion to compel and appeal); the entirety of M&G's preparation of opening quantitative and qualitative market dominance evidence; and presumably a significant portion of M&G's preparation of opening SAC evidence, which M&G began developing as early as January 2011.¹⁷ The fact that M&G has completed all these tasks while spending approximately half of what the Board estimated would be the costs of a full SAC case suggests that the Board's previous estimate of the costs of a SAC case is dead on.¹⁸

None of this is to suggest that litigating rate reasonableness cases is a cost-free enterprise. All litigation imposes costs on both plaintiffs and defendants, and rate reasonableness litigation should be no different. But the Board has carefully developed a tiered system that ensures that

¹⁷ M&G agreed to bifurcate market dominance and SAC evidence on April 15, 2011, five months after the close of discovery and just 2½ months before the previous deadline for opening SAC evidence. M&G's counsel and consultants began developing its SAC evidence as early as January 2011. *See* M&G Motion to Modify Procedural Schedule, *M&G Polymers USA LLC v. CSX Transp., Inc.*, STB Docket No. 42123, at 3 (filed Jan. 10, 2011) ("development of M&G's SAC evidence has closely followed the development of TPI's evidence").

¹⁸ In addition, while PPG claimed at the hearing that the costs to litigate a SAC case would be \$20 million, after the hearing it clarified that "the legal and consultant fees involved to litigate [a] large SAC case" would be only "approximately \$5 million" and that almost all of the remainder of its \$20 million "estimate" derived from paying tariff rates during the pendency of litigation. Supplemental Comments of PPG Industries, Inc., Ex Parte No. 705 (filed July 15, 2011).

the cost of litigation will not be an unreasonable obstacle to shippers' ability to pursue rate remedies. As the Board found in *Simplified Standards*, a shipper who spends \$250,000 or less to litigate a Three Benchmark case has the opportunity to obtain up to \$1 million in relief, and a shipper spending \$1 million or less to litigate a Simplified SAC case could obtain up to \$5 million in relief. *Simplified Standards*, Ex Parte No. 646 (Sub-No. 1) at 32. And a litigant who spends \$5 million or less to litigate a SAC case can obtain relief amounting to hundreds of millions of dollars. *Cf. Western Fuels Ass'n v. BNSF Ry. Co.*, STB Docket No. 42088 (Feb. 18, 2009). There is no evidence that this framework is not working well, and indeed the fact that so many of the shippers complaining about the cost of rate litigation have litigated or are litigating rate cases demonstrates that the cost of litigation is not restricting access to rate reasonableness challenges.

B. The Board Does Not Have Authority to Suspend Rate Increases During The Pendency of Rate Reasonableness Cases.

During a colloquy with a panel of chemical shippers who claimed that it was unfair for them to pay tariff rates while those rates were subject to a rate reasonableness challenge, some questions were asked about the Board's ability to suspend rate increases during the pendency of such a challenge. *See M&G Testimony and Board Questions* (STB Hearing File 3 at 04:38:00). The short answer to these questions is that the Board does not have statutory authority to suspend a rate prior to finding that rate to be unreasonable. Indeed, the removal of the ICC's authority to suspend rail tariff rates was a key feature of ICCTA. The Board therefore cannot suspend a rate increase during the pendency of a rate reasonableness case unless and until Congress changes the statute.

Historically, the ICC had broad powers to suspend a rail common carrier rate before the rate went into effect. Beginning with the Staggers Act, however, Congress progressively

curtailed the ICC's power to suspend a common carrier rate prior to a final determination of whether the rate in question was unreasonable. The Staggers Act limited the ICC's rate suspension authority to instances where a protestant could prove that it was substantially likely to prevail on the merits and would suffer "substantial injury" that could not be remedied by reparations. *See* Staggers Rail Act of 1980, Pub. L. No. 96-448, § 207(c), 94 Stat. 1895, 1907 (1980) (then-codified at 49 U.S.C. § 10707(c)). In ICCTA, Congress repealed the ICC's former power to suspend rates entirely. *See Arizona Public Service Co. v. BNSF Ry. Co.*, STB Docket No. 42077, at 7 (Oct. 14, 2003) ("In [ICCTA], Congress further facilitated railroads' rate-making initiative by repealing the rate suspension procedures under which rate adjustments were sometimes prohibited from taking effect without first being investigated."). There is simply no statutory authority for the Board to resume the pre-Staggers ICC practice of routinely suspending rates while those rates are being challenged.

The agency does have a limited residual power to issue injunctions in emergency situations where such relief is essential to prevent imminent irreparable harm. *See* 49 U.S.C. § 721(b)(4). Consistent with the statute and congressional intent, the Board has exercised the extraordinary emergency injunction authority very sparingly and has required litigants seeking an injunction to satisfy the four-part test traditionally used by federal courts to evaluate preliminary injunction requests. *See, e.g., Seminole Elec. Coop., Inc. v. CSX Transp., Inc.*, STB Docket No. 42110 (Dec. 22, 2008) ("*Seminole*") (citing four-part test set forth in *Washington Metropolitan Area Transit Comm'n v. Holiday Tours*, 559 F.2d 841 (D.C. Cir. 1977)). Among other things, this test requires litigants requesting injunctions to demonstrate that they will be irreparably harmed in the absence of an injunction. *See id.*

Almost by definition, any harm from paying a challenged tariff rate during a rate case is reparable harm, because it will be compensated through reparations should the complainant prevail. It is therefore not surprising that the Board has regularly denied complainants' requests that the Board enjoin a rate during the pendency of a rate reasonableness case. *See, e.g., Seminole*, STB Docket No. 42110 (Dec. 22, 2008); *B.P. Amoco Chem. Co. v. Norfolk So. Ry. Co.*, STB Docket No. 42093, at 3 (June 6, 2005); *Arizona Public Service Co. v. BNSF Ry. Co.*, 7 S.T.B. 76, 81-82 (2003).¹⁹ For example, in *Seminole* the complainant sought an injunction prohibiting the defendant carrier from collecting the challenged rates during the pendency of a SAC case. *Seminole*, STB Docket No. 42110 (Dec. 18, 2008). Complainant *Seminole* alleged, *inter alia*, that if it absorbed increased rail rates during the pendency of the case, it would be forced to borrow money at an interest rate that was higher than the interest rate paid on reparations. *See id.* at 4. The Board found that the injury *Seminole* alleged it would sustain was solely a monetary loss, and a "monetary or economic loss by itself does not constitute irreparable harm." *Id.* Because *Seminole* failed to establish one of the four essential factors required for injunctive relief (that it would suffer irreparable harm in the absence of an injunction), the Board denied the injunction without even considering the other three factors. *Id.* at 4-5.

In short, the Board does not have authority to suspend rates during the pendency of rate proceedings, and its limited § 721(b)(4) injunctive power cannot be used to prevent economic losses from tariff rates that a complainant alleges are "inflated" because any such losses can be compensated through reparations should the shipper prevail.

¹⁹ The single instance in which the Board enjoined a carrier from collecting a new rate was a unique case involving the re-opening of a rate case several years after a full adjudication on the merits. *See Arizona Public Service Co. v. Atchison, T. & S.F. Ry. Co.*, 2 S.T.B. 367 (1997). In that case, due to the unique circumstances and posture of the case, the parties consented to the effective maintenance of the rate prescription during the pendency of the reopening. *See id.*

C. The Board Processes Rate Reasonableness Cases Expeditiously.

Some shippers complained about the length of time that the Board takes to resolve rate reasonableness disputes. *See* M. McGarry on behalf of PPG (STB Hearing File 3, 2:18:45); F. Fournier on behalf of M&G (STB Hearing File 3, 04:41:20). This complaint is not well founded. Many of the rate reasonableness cases brought before the Board are substantial commercial disputes involving tens of millions of dollars. Complex litigation with substantial money at stake naturally takes some time to resolve, and no shipper presented evidence that rate cases are being unduly delayed. Indeed, a review of recent rate cases demonstrates that, contrary to the assertions of some shippers, the Board is resolving rate reasonableness cases expeditiously.

The average time between initial complaint and final disposition for rate reasonableness cases filed since 2000 is approximately 2 years and 1 month. *See* Exhibit 1. This average falls to 22 months when excluding the three cases delayed during the pendency of the Ex Parte 657 rulemaking and to just 13½ months when considering only cases filed since 2006. *See id.* Indeed, given that chemicals shippers were the primary source of complaints about the allegedly unreasonable length of time necessary to resolve SAC cases, it should be noted that the average time to resolve the ten rate reasonableness cases for chemicals shipments brought since 2000 was less than a year. *See id.* Half of the rate reasonableness cases filed since 2000 have been resolved via settlement (just like most cases in other civil litigation). But even limiting the analysis to cases that proceeded through full Board adjudication produces an average time between complaint and adjudication of just over three years (and less than 2 years and 10 months if one excludes cases delayed by Ex Parte 657). That resolution time compares favorably to the time it takes to resolve other federal civil litigation that proceeds all the way to trial. For example, the U.S. District Court for the District of Columbia recently reported that the median time between filing and disposition of civil cases that proceeded to a trial was 37.2 months –

over three years. See Exhibit 2 (Administrative Office of U.S. Courts, Statistical Tables for the Federal Judiciary (June 2010) at Table C-5, *available at* <http://www.uscourts.gov/uscourts/Statistics/StatisticalTablesForTheFederalJudiciary/2010/C05Jun10.pdf>. It is safe to say that many of those cases are substantially less complex than a full SAC case. And many commercial disputes take much longer than three years to resolve.²⁰

Moreover, procedural schedules in several recent rate cases have been extended at the shipper's request. See, e.g., *Seminole*, STB Docket No. 42110 (May 6, 2009) (granting *Seminole's* motion delaying the procedural schedule by 85 days); *Seminole*, STB Docket No. 42110 (July 13, 2009) (further extending the procedural schedule by 63 days based on *Seminole's* motion); *Seminole*, STB Docket No. 42110 (Mar. 4, 2010) (again delaying the procedural schedule by 34 days pursuant to *Seminole's* motion); *Total Petrochemicals USA, Inc. v. CSX Transp., Inc.*, STB Docket No. 42121 (Feb. 4, 2011) ("*TPI v. CSXT*") (granting TPI motion to delay the procedural schedule by 76 days); *M&G Polymers USA, LLC v. CSX Transp., Inc.*, STB Docket No. 42123 (Feb. 23, 2011) (granting M&G request to extend the procedural schedule by 67 days). While extensions of time in rate reasonableness cases are sometimes warranted, the fact that the Board has generally accommodated shippers' requests for additional time to prepare their evidence is plainly not something that limits shipper access to the Board's remedies.

²⁰ For example, while a witness for Olin Corporation ("*Olin*") claimed at the June 22-23 hearing that it takes too long for the Board to complete a rate case, Olin has been involved in commercial litigation that took almost twenty years to resolve. See *Olin Corp. v. American Re-Insurance Co.*, 74 Fed Appx. 105 (2d Cir. Sept. 2, 2003) (observing that subject lawsuit between Olin and its insurers was "approaching 20 years in duration"); *Collins v. Olin Corp.*, Civ. Act. No. 3:03-cv-945, 2010 WL 1677764 (D. Conn. Apr. 21, 2010) (approving settlement of class action against Olin entered nearly seven years after initial complaint was filed).

D. Other Complaints About The Rate Reasonableness Process Should Be Rejected.

Shippers raised three other complaints about the rate reasonableness process, none of which have any merit.

First, some shippers complained about the statutory requirement that shippers prove market dominance requirements and asked the Board to make clear that a shipper with access to multiple rail carriers can still maintain a rate case. *See* James Sobule on behalf of Ameren (STB Hearing File 3, 00:11:15).²¹ The proposition that direct rail-to-rail competition for a movement might not constitute “effective competition from other rail carriers” under 49 U.S.C. § 10707(a) is dubious at best. It is hard to imagine a situation in which a shipper who has a choice of more than one rail carrier for a particular movement would be able to demonstrate that one of those railroads was market dominant. (Indeed, which one of the two serving railroads would be the market dominant one?) Regardless, this proceeding is not the appropriate forum for the Board to comment on the meaning of a market dominance standard that has been developed through decades of caselaw. And if a shipper served by more than one railroad believes that it can prove that having access to more than one rail carrier does not provide effective competition within the meaning of § 10707(a), then it can file its complaint and attempt to convince the Board of that highly questionable proposition. No statement by the Board is necessary to authorize such a complaint.

²¹ At the hearing, Board members immediately saw the logical inconsistency in these shippers’ position. On the one hand, they seek a restructuring of the rail industry through forced access to create artificial competition. On the other hand, they argue that the outcome may not satisfy them with sufficiently lower rates and urge the Board to apply rate regulation even after granting forced access.

Second, despite Chairman Elliott's instruction that litigants in pending Board proceedings should not comment on those proceedings,²² the witness for M&G Polymers USA, LLC proceeded to offer reasons why he believed CSXT possessed market dominance over some of M&G's rail shipments. It was unfortunate that M&G's witness chose to disregard Chairman Elliott's instruction, and M&G's comments about CSXT's alleged market dominance should be disregarded as both irrelevant to the matters at issue in Ex Parte 705 and procedurally improper. Nor should M&G's comments be considered for any purpose in *M&G Polymers USA, LLC v. CSX Transp., Inc.*, STB Docket No. 42123. The entirety of M&G's market dominance case in chief in that proceeding was due on June 6, 2011, and M&G may not supplement its June 6 filing with testimony in this proceeding.²³ In any event, M&G's allegations about the supposed factors making CSXT market dominant over M&G's rail traffic were thoroughly debunked in CSXT's Reply Market Dominance Evidence filed July 5, 2011 in Docket No. 42123.

Third, other shippers suggested at the hearing that the Board should raise the eligibility limits for Simplified SAC and Three Benchmark cases (currently \$5 million and \$1 million, respectively). See Testimony of Tom Wilcox on behalf of OPPD (STB Hearing File 3, 00:44:35). This proposal is both far outside the scope of this proceeding and entirely unwarranted. The Board adopted the current thresholds after a full notice-and-comment rulemaking that included vigorous debate about appropriate eligibility limits for the simplified standards and in which the Board substantially increased eligibility standards from those in its

²² See Hearing Testimony File 1, 00:06:19 ("I would remind parties that this hearing is not the proper forum to litigate any specific pending manner. These issues touch many cases under consideration, but arguments as to the merits of any case are best left to those dockets.").

²³ Cf. *General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases*, 5 S.T.B. 441, 445 (2001) ("[T]he party with the burden of proof on a particular issue must present its entire case-in-chief in its opening evidence.").

initial proposal.²⁴ Those standards were well supported by the record in *Simplified Standards* and were sustained after appeal. Indeed, the Board found in *Simplified Standards* that 73% of all traffic potentially eligible for a rate reasonableness challenge has a maximum case value that would make it eligible for one of the simplified methodologies. *See Simplified Standards*, Ex Parte No. 646 (Sub-No. 1), at 35 (Sept. 5, 2007) (finding that 45% of regulated traffic with an R/VC over 180% had a maximum case value less than \$1 million and that another 28% of regulated traffic with R/VC over 180% had a maximum case value less than \$5 million). There is no need to expand access to admittedly “rough and imprecise” simplified methodologies that already are available for nearly three quarters of all traffic potentially eligible for a rate case. *See id.* at 73 (recognizing that simplified standards were “necessarily . . . very rough and imprecise”).

* * *

Shippers’ complaints about the Board’s processes for rate reasonableness cases are not well founded. The Board has gone to considerable efforts in recent years to improve access to its rate reasonableness procedures, and the evidence shows that those efforts have been successful. But even if commenters at the hearing had identified real problems with the Board’s rate reasonableness procedures, the appropriate response would be for the Board to address those alleged problems directly (in a separate proceeding) – not to remake the regulatory landscape and risk significant and serious damage to the financial viability and operational capacity of the railroad industry.

²⁴ Specifically, the Board increased the threshold for Simplified SAC relief to \$5 million from \$3.5 million in the NPRM, and the threshold for Three Benchmark relief to \$1 million from \$200,000 in the NPRM (an increase of 500%).

III. CSXT HAS NOT REDUCED THE NUMBER OF CUSTOMERS OPEN TO RECIPROCAL SWITCHING.

In response to one of the questions raised by Commissioner Mulvey at the June 22-23 hearing, CSXT can confirm that it has not reduced the number of actual customer locations open to reciprocal switching since 2007. It is true that CSXT's current Tariff 8100 lists fewer customer locations open to reciprocal switching than were listed in the 2007 version of that tariff, but this is not because CSXT closed any stations for reciprocal switching. Rather, it is the result of a 2008 data update in which CSXT removed duplicate customer names and references to customers who are no longer in business. In fact, CSXT is not aware of any locations or customers on CSXT that have been closed to reciprocal switching since 2007.

At the June 22-23 hearing, Commissioner Mulvey commented that there has been a 50% reduction in stations open to switching on CSXT since 2007. *See* STB Hearing File 1 at 2:33:49-2:34:16. CSXT CEO and Chairman Michael Ward testified that he did not believe that the 50% figure was accurate and that CSXT would investigate and verify the correct figure with the Board. *See id.* at 5:04:01-5:04:25. CSXT now can verify definitively that there has not been a 50% reduction in stations open to switching on CSXT since 2007. Indeed, CSXT's investigation found no locations (stations) or customers on CSXT that have been closed to reciprocal switching since 2007. CSXT believes that the confusion about this issue may stem from a comparison of the current version of CSXT's Tariff 8100 listing of customer locations open to reciprocal switching with the 2007 version of that Tariff. There are indeed approximately 50% fewer customer names listed in the current version of the 8100 Tariff than were listed in the 2007 version. But this is not the result of CSXT closing stations for reciprocal switching; it is the result of a 2008 data clean-up in which CSXT eliminated duplicative or obsolete customer references. For example, certain customers were listed multiple times in the pre-2008 version of

the Tariff – the current version eliminates this duplication.²⁵ In other instances customer locations were eliminated from the Tariff 8100 listing where CSXT could not confirm that a customer was still doing business at the location (e.g., when the business had been abandoned).²⁶

As a result of this data clean-up, the January 11, 2008 publication of Tariff 8100 reduced the list of customer locations open to reciprocal switching from approximately 1000 to approximately 468 customers – roughly a 53% reduction in the absolute number of listings. CSXT believes that it was likely this reduction associated with duplicative or outdated customer names and locations – not the closing of locations or customers – that accounted for the data change Commissioner Mulvey referred to during the hearing.

IV. COMPLAINTS RAISED BY THE CHEMICALS INDUSTRY SHOULD BE REJECTED.

A disproportionate number of the calls in this proceeding for reshaping the regulatory landscape have come from a few vocal and well-financed chemicals shippers, and particularly shippers of chemicals that are classified by the Department of Transportation as poisonous by inhalation and toxic by inhalation (collectively, “TIH”). The Board should be cautious not to ascribe undue weight to the views of this narrow group of shippers, who have naturally experienced rate increases in the post-September 11 era as a result of the exponential growth in risk and costs related to carrying TIH traffic. As demonstrated below, the rate increases complained of by CSXT TIH shippers are not at all out of line with the costs and risks inherent in transporting that traffic. Moreover, the relative cost of rail freight is only a small proportion

²⁵ Compare Exhibit 3, CSXT Tariff 8100 Section I-C List of Industries for Buffalo, NY (effective Aug 24, 2007) (listing both American Axle Manufacturing and American Axle Manufacturing (Konananda Forge)) with Exhibit 4, CSXT Tariff 8100 Section I-D List of Industries for Buffalo, NY (effective April 9, 2010) (listing only American Axle Manufacturing).

²⁶ Compare Exhibit 5, CSXT Tariff 8100 Section I-C List of Industries for Atlanta, GA (effective July 7, 2000) (listing Tri-State Tractors) with Exhibit 6, CSXT Tariff 8100 Section I-D List of Industries for Atlanta, GA (effective Jan 11, 2008) (omitting Tri-State Tractors).

of the total delivered cost of most chemicals and does not have any significant effect on the bottom line of these chemical interests (most of whose profitability would be the envy of most companies).

No fewer than nine of the witnesses at the hearing represented TIH shippers or industry associations that include TIH shippers.²⁷ Indeed, out of the twenty-one witnesses from shippers or shipper organizations who testified at the hearing in support of changing the current regulatory regime 43% represent TIH shippers (9 of 21). Yet TIH materials account for only 0.25% of all U.S. rail carloads – in other words only one out of every 400 carloads encompasses TIH materials.²⁸ TIH shippers' representation at the June 22-23 hearing was therefore approximately 172 times larger than their proportion in the actual population of rail shippers.

Representatives of TIH shippers complained about the allegedly high percentage of freight transportation costs in the total delivered cost of TIHs (particularly chlorine) and argued that since 2000 average rates per chlorine carload increased more rapidly than the RCAF.²⁹ Little hard evidence was offered to support this testimony. But regardless, there is nothing unusual or anticompetitive about the fact that CSXT's freight rates have been rising for these extremely dangerous commodities. The transportation of TIH materials imposes massive risks and costs on the rail industry far out of proportion to the tiny fraction of traffic it represents, including increased insurance costs, the risk of catastrophic liability from an accident involving

²⁷ Specifically, the American Chemistry Council, the Chlorine Institute, Arkema, Inc., Dow Chemical Company, E.I. du Pont de Nemours and Company, Occidental Chemical Company, Olin Corporation, PPG Industries, Inc., and Diversified CPC International, Inc.

²⁸ See Association of American Railroads, *Hazmat Transportation by Rail: An Unfair Liability*, available at <http://www.aar.org/~media/aar/Background-Papers/Haznat-by-Rail.ashx> [sic].

²⁹ See, e.g., Testimony of Chlorine Institute (STB Hearing File 2 at 1:53:25) (stating that average rates per chlorine carload had increased 133% between 2000 and 2009 compared to a 47% increase in "the rail cost recovery index" during that period (presumably meaning the RCAF)).

TIH movements, increased regulatory burdens, and the government mandate to implement Positive Train Control systems on lines used to transport TIHs. These costs have rapidly increased in recent years. The September 11, 2001 terrorist attacks illuminated the significant risks of catastrophic devastation from an accidental or intentional release of TIH and contributed both to a greater appreciation of liability risks by railroads and their insurers and to substantially more complex and burdensome government regulations related to TIH transportation. Few of these costs are reflected in the Board's standard costing models. For example, the URCS costs for a particular TIH movement do not reflect the disproportionate impact that TIH movement has on increasing the carrier's insurance cost, liability risk, and costs of compliance with Positive Train Control requirements and other regulations. *Cf. Reporting Requirements for Positive Train Control Expenses and Investments*, Ex Parte No. 706 (Feb. 10, 2011) (instituting rulemaking proceeding on whether carriers should report segregated and separately identifiable data on PTC investments and expenditures). Testimony from the Chlorine Institute asserting that increases in chlorine rates since 2000 have outpaced the RCAF is therefore not at all surprising, and certainly no reason for the Board to remake the regulatory system or impose new forced access regulations. Indeed, the Board should be particularly reluctant to create a regime that would require more handling, more interchanges, and more opportunities for the kinds of catastrophic accidents that can result from handling TIHs. If a chlorine shipper believes that its rates are unreasonably high, it can bring a rate reasonableness complaint to the Board.³⁰

³⁰ Indeed, DuPont has brought several cases involving chlorine movements, including now-settled Three Benchmark and SAC cases against CSXT and a currently-pending case against Norfolk Southern. U.S. Magnesium, LLC has also brought several cases involving chlorine transportation under the simplified guidelines. *See US Magnesium, LLC v. Union Pac. R.R. Co.*, STB Docket No. 42114 (Jan. 27, 2010); *see also US Magnesium, LLC v. Union Pac. R.R. Co.*, STB Docket Nos. 42115 & 42116.

Other chemicals shippers' complaints about the supposed impact of rail rates on the delivered costs of their products were not supported by any specific evidence and should not be considered. *See, e.g.*, Testimony of K. Smith on behalf of DuPont (STB Hearing File 3 at 1:49:15). In fact, publicly available evidence shows that freight costs are a tiny fraction of the total delivered cost of many of the chemicals shipped by witnesses at the hearing. To take DuPont as an example, recently it was reported that DuPont is increasing the price of titanium dioxide by \$0.10 a pound – a price increase that translates to \$19,000 per 190,000 pound railcar shipment.³¹ That price increase follows a price hike earlier this year of \$0.15 per pound – another \$28,500 per railcar.³² Freight costs are plainly not affecting DuPont's ability to extract significant profits from its customers. In another example, M&G Polymers manufactures polyethylene terephthalate ("PET"), a plastics product that has a market price of approximately \$190,000 per railcar. The CSXT tariff rates M&G is challenging in STB Docket No. 42123 are a small fraction of that total cost: the challenged rail rates range between 1.4% and 4.9% of the total price that one of M&G's customers pays for a hopper car of PET.³³

M&G's witness mentioned at the hearing that M&G was considering building a new PET plant in the Gulf Coast and implied that M&G's selection of that location was motivated in part by the cost of rail service. *See* Testimony of F. Fournier on behalf of M&G (STB Hearing File 3 at 04:04:15). It is worth noting that when M&G announced plans to locate this new facility in Corpus Christi, Texas, most of the benefits of that location M&G mentioned in that

³¹ *See* ICIS Chemical Business, "Titanium dioxide buyers feel the pain," (June 20, 2011) available at <http://www.icis.com/Articles/2011/06/20/9470805/titanium-dioxide-buyers-feel-the-pain.html>.

³² *Id.*

³³ Support for these figures was provided in CSXT's July 5, 2010 reply market dominance evidence filed in Docket No. 42123. *See* CSXT Reply Market Dominance Evidence at 1-12 & nn. 12-13, *M&G v. CSXT*, Docket No. 42123 (filed July 5, 2011).

announcement had nothing to do with rail service. M&G cited a “business-friendly” environment, “low workforce costs,” “the service and supply efficiencies resulting from the presence of six refineries and Paraxylene production in the area,” and “the excellent port infrastructure that allows the benefit of having marine access to most of the PTA/PET facility’s key raw materials, Paraxylene, Acetic Acid and Ethylene Glycol.” See Exhibit 7 (M&G Press Release “M&G Selects Corpus Christi, Texas as the site of its 1 million ton PET and 1.2 million ton PTA plants” (July 11, 2011)). M&G’s own press announcement thus contradicts its hearing testimony suggesting that CSXT’s rates to M&G’s West Virginia plant caused it to seek a different location for its new plant. Indeed, given the small fraction of the total delivered price of PET constituted by rail costs, it is not surprising that M&G’s selection of a new plant location was driven by other factors.

Similarly, the chemical industry’s allegations to the Board about the supposed pernicious effect that rail rates have on the financial health of the U.S. chemicals industry are not echoed by their statements in other forums. A recent editorial on behalf of the American Chemical Council touted “a growing resurgence in the domestic chemical industry” and argued that the “competitive advantage” U.S. chemical manufacturers have over foreign producers as a result of low natural gas prices was allowing “numerous [U.S.] chemical manufacturers” to make new investments that would generate “hundreds of thousands” of new jobs in the United States. Calvin M. Dooley, *NAT GAS Act Isn’t the Solution for Energy*, Roll Call, July 13, 2011.³⁴

CSXT values its chemicals customers, and chemicals shippers have as much right to avail themselves of the Board’s processes as shippers of other commodities. But the Board should be

³⁴ See also *Tapping Into America’s Newfound Energy*, Wall Street Journal, July 6, 2011, at C26 (noting that U.S. natural gas reserves “provide[] U.S. manufacturing with a cost advantage relative to other regions: Witness the revival of chemicals production by the likes of Dow Chemical using cheaper natural-gas liquids.”).

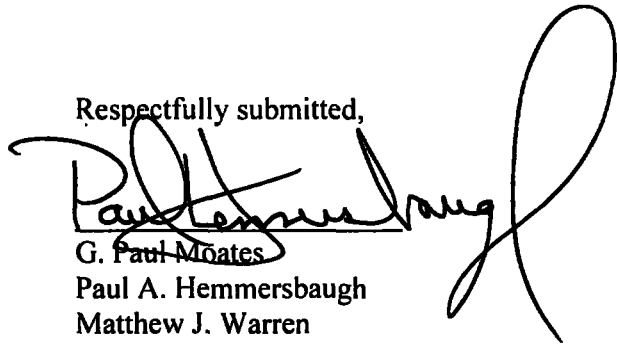
aware that chemicals shippers and particularly TIH shippers have interests and risk characteristics that are fundamentally different than many other shippers. The Board should be cautious about taking action that could affect the vast majority of shippers at the behest of a small fraction of the shipping community.

V. CONCLUSION

For the reasons stated in CSXT's Initial Comments, Reply Comments, its written and oral testimony, and these Supplemental Comments, the Board should not change its existing rail competition and access policies, and it should conclude this proceeding without taking any further action.

Peter J. Shultz
Paul R. Hitchcock
John P. Patelli
Kathryn R. Barney
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read "Paul A. Hemmersbaugh". The signature is written over the printed name and extends to the right with a long, looping flourish.

G. Paul Moates
Paul A. Hemmersbaugh
Matthew J. Warren
Marc A. Korman
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for CSX Transportation, Inc.

Dated: July 25, 2011

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Time to Resolve Rate Reasonableness Cases Filed Since 2000

Docket No:	Case Name:	Commodity:	Guidelines Used:	Date of Complaint:	Date of Decision:	Time Pending (in Years/Months/Days):	Time Pending (in Days)	Decision:
42054	<i>PPL v. BNSF</i>	Coal	SAC	7/6/2000	8/20/2002	2 years, 1 month, 14 days	775	Rates Reasonable
42059	<i>Northern States v. UP</i>	Coal	Stipulated RVC	1/26/2001	8/7/2003	2 years, 6 months, 12 days	923	Settlement
42077	<i>APS v. BNSF</i>	Coal	SAC	1/30/2003	12/31/2003	11 months, 1 day	335	Withdrawn
42056	<i>TMPA v. BNSF</i>	Coal	SAC	10/3/2000	9/27/2004	3 years, 11 months, 24 days	1455	Rates Unreasonable
42069	<i>Duke v. NS</i>	Coal	SAC	12/19/2001	10/20/2004	2 years, 10 months, 1 day	1036	Rates Reasonable
42070	<i>Duke v. CSXT</i>	Coal	SAC	12/19/2001	10/20/2004	2 years, 10 months, 1 day	1036	Rates Reasonable
42072	<i>Carolina Power v. NS</i>	Coal	SAC	2/1/2002	10/20/2004	2 years, 8 months, 19 days	992	Rates Reasonable
42057	<i>Xcel v. BNSF</i>	Coal	SAC	12/20/2000	12/14/2004	3 years, 11 months, 24 days	1455	Rates Unreasonable
42058	<i>AEPCO v. BNSF</i>	Coal	SAC	12/29/2000	3/15/2005	4 years, 2 months, 15 days	1537	Rates Reasonable
42071	<i>Otter Tail v. BNSF</i>	Coal	SAC	1/2/2002	1/27/2006	4 years, 25 days	1486	Rates Reasonable
41191 (Sub-No. 1)	<i>AEP Texas v. BNSF †</i>	Coal	SAC	8/1/2003	5/15/2009	5 years, 9 months, 4 days	2104	Rates Reasonable
42088	<i>Western Fuels v. BNSF †</i>	Coal	SAC	10/19/2004	2/18/2009	4 years, 3 months, 30 days	1583	Rates Unreasonable
42091	<i>APS v. BNSF</i>	Coal	SAC	12/17/2004	2/10/2006	1 year, 1 month, 24 days	420	Settlement
42093	<i>BP Amoco v. NS</i>	Chemical	Simplified	5/20/2005	6/28/2005	1 month, 8 days	39	Settlement
42095	<i>KCP&L v. UP †</i>	Coal	Stipulated RVC	10/12/2005	5/19/2008	2 years, 7 months, 7 days	950	Rates Unreasonable
42097	<i>Albemarle v. LNW</i>	Chemical	SAC	4/17/2006	11/14/2006	6 months, 28 days	211	Settlement
42098	<i>Williams Olefins v. GTC</i>	Chemical	Simplified	11/22/2006	2/15/2007	2 months, 24 days	85	Settlement
42099	<i>DuPont v. CSXT</i>	Chemical	Three-Benchmark	8/21/2007	9/1/2009	2 years, 11 days	742	Settlement
42100	<i>DuPont v. CSXT</i>	Chemical	Three-Benchmark	8/21/2007	9/1/2009	2 years, 11 days	742	Settlement
42101	<i>DuPont v. CSXT</i>	Chemical	Three-Benchmark	8/21/2007	9/1/2009	2 years, 11 days	742	Settlement
42110	<i>Seminole Electric v. CSXT</i>	Coal	SAC	10/3/2008	9/27/2010	1 year, 11 months, 24 days	724	Settlement
42111	<i>Oklahoma Gas v. UP</i>	Coal	Stipulated RVC	11/7/2008	7/24/2009	8 months, 17 days	259	Rates Unreasonable
42112	<i>E.I. DuPont v. CSX</i>	Chemical	SAC	11/10/2008	5/11/2009	6 months, 1 day	182	Settlement
42113 (Sub-No. 1)	<i>AEPCO v. UP</i>	Coal	SAC	12/30/2008	4/15/2011	2 years, 3 months, 16 days	836	Settlement

Time to Resolve Rate Reasonableness Cases Filed Since 2000

Docket No:	Case Name:	Commodity:	Guidelines Used:	Date of Complaint:	Date of Decision:	Time Pending (in Years/Months/Days):	Time Pending (in Days)	Decision:
42114	<i>U.S. Magnesium v. UP</i>	Chemical	Three-Benchmark	5/4/2009	1/28/2010	8 months, 24 days	269	Rates Unreasonable
42115	<i>U.S. Magnesium v. UP</i>	Chemical	Simplified SAC	6/25/2009	4/2/2010	9 months, 8 days	281	Settlement
42116	<i>U.S. Magnesium v. UP</i>	Chemical	Simplified SAC	10/9/2009	4/2/2010	5 months, 24 days	175	Settlement
42122	<i>NRG v. CSXT</i>	Coal	SAC	5/18/2010	7/8/2010	1 month, 20 days	51	Settlement
<p>†AEP Texas North v. BNSF Railway Co., Kansas City Power & Light v. Union Pacific, and Western Fuels Ass'n v. BNSF Railway Co. were pending when the Board began its revision to SAC rules in Ex Parte 657, Major Issues in Rail Rate Cases. The procedural schedule in each case was delayed during that rulemaking.</p>								
				Average for all cases:		2 years, 1 month, 3 days	765	
				Average for all cases filed since 2006:		1 year, 1 month, 11 days	408	
				Average for all cases without cases delayed by EP 657†:		1 year, 10 months, 2 days	672	
				Average for all chemicals cases:		11 months, 11 days	347	
				Average for all coal cases:		2 years, 8 months, 24 days	998	
				Average for all adjudicated cases:		3 years, 1 month, 22 days	1149	
				Average for adjudicated cases without cases delayed by EP 657†:		2 years, 9 months, 25 days	1030	

Table C-5.
U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases
Terminated, by District and Method of Disposition,
During the 12-Month Period Ending June 30, 2010

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
TOTAL	238,326	8.0	42,915	4.6	166,327	7.9	26,126	15.4	2,958	22.9
DC	2,076	8.3	838	8.8	1,199	7.5	16	38.9	23	37.2
1ST	4,759	9.1	797	4.4	2,941	8.3	891	16.7	130	28.1
ME	508	6.5	167	3.6	315	7.1	19	15.6	7	-
MA	2,209	9.0	331	3.8	1,244	7.9	554	15.5	80	30.0
NH	343	6.9	78	3.5	175	5.3	88	14.4	2	-
RI	616	11.5	19	6.6	485	10.5	106	16.8	6	-
PR	1,083	11.5	202	9.6	722	10.1	124	20.7	35	28.0
2ND	19,388	8.4	4,528	5.5	11,666	8.2	2,869	13.8	325	32.4
CT	1,812	7.3	1,118	5.5	587	10.1	55	21.5	52	29.5
NYN	1,036	12.2	265	5.0	465	11.9	276	17.5	30	24.1
NYE	5,202	9.2	1,112	6.9	2,894	8.3	1,094	13.6	102	38.8
NYS	9,687	7.8	1,771	5.0	6,430	7.3	1,364	13.2	122	29.1
NYW	1,405	8.9	237	3.6	1,074	10.4	78	17.2	16	50.1
VT	246	8.7	25	3.9	216	8.7	2	-	3	-
3RD	76,573	7.9	3,076	3.7	69,673	7.9	3,524	12.1	300	26.4
DE	739	9.6	168	5.1	534	10.4	7	-	30	29.9
NJ	5,925	6.7	1,148	4.8	2,883	4.1	1,808	13.4	86	33.6
PAE	66,019	8.0	625	2.0	63,865	8.0	1,428	9.8	101	18.7
PAM	1,647	5.7	590	2.8	957	6.8	68	20.0	32	23.9
PAW	1,836	6.6	394	3.4	1,378	7.5	32	22.6	32	32.7
VI	407	30.7	151	25.8	56	36.5	181	30.7	19	47.5
4TH	11,103	7.5	2,899	6.0	7,057	7.7	970	8.9	177	19.1
MD	2,621	7.4	852	6.9	1,469	6.4	257	11.9	43	25.9
NCE	829	8.8	333	6.9	472	10.0	20	11.6	4	-
NCM	544	8.4	332	7.0	184	10.0	22	13.8	6	-
NCW	760	6.2	207	5.0	485	5.7	61	11.6	7	-
SC	2,425	10.4	451	6.8	1,850	10.9	92	11.6	32	23.3
VAE	2,120	4.9	314	2.8	1,305	4.4	447	7.0	54	11.1
VAW	609	8.2	143	6.4	412	8.6	43	10.5	11	14.3
WVN	338	9.4	176	8.0	149	10.6	5	-	8	-
WVS	857	9.4	91	4.7	731	9.8	23	15.8	12	18.9

Circuit and District	Total Cases			No Court Action			Court Action			
	Number of Cases	Median Time Interval In Months		Number of Cases	Median Time Interval In Months		Before Pretrial		During or After Pretrial	
							Number of Cases	Median Time Interval In Months	Number of Cases	Median Time Interval In Months
5TH	23,500	11.4		5,409	5.0		11,236	9.0	6,449	38.8
	8,983	26.7	A.A.E	108	3.8		3,059	9.0	5,744	40.9
	757	4.9	A.M	616	3.2		105	14.6	27	23.6
	1,446	10.2	A.A.W	516	6.8		829	11.7	59	22.8
	676	11.3	M.S.N	224	7.7		303	11.9	125	15.6
	1,858	8.2	M.S.S	1,117	5.2		653	10.8	53	22.7
	2,609	6.8	TX.N	330	3.8		2,219	7.1	-	-
	1,553	10.0	TX.E	366	6.3		1,088	10.5	51	19.5
	3,752	6.6	TX.S	1,613	4.1		1,720	8.0	353	9.7
	1,866	8.8	TX.W	519	6.9		1,260	8.9	37	16.1
	15,133	9.4		3,803	4.9		7,647	9.7	3,439	12.2
	1,143	9.9	KY.E	131	6.6		980	9.9	20	21.0
	1,086	8.0	KY.W	435	6.6		535	7.9	15	13.6
	3,374	8.5	MI.E	733	3.9		1,261	6.0	1,326	12.6
	887	7.0	MI.W	139	1.6		617	8.2	118	9.4
6TH	3,377	9.5	OH.N	735	3.7		1,725	13.1	870	9.1
	2,188	10.6	OH.S	806	5.8		660	10.4	684	14.2
	1,023	11.3	TN.E	205	5.7		507	9.9	287	15.3
	1,094	9.3	TN.M	195	9.1		867	9.0	11	18.5
	961	10.7	TN.W	424	7.9		495	12.6	22	21.8
	12,367	7.1		3,595	4.6		6,925	6.9	1,641	12.4
	6,765	6.0	L.N	2,109	4.8		3,969	5.8	589	11.2
	682	10.6	L.C	268	7.0		392	12.1	4	-
	755	6.0	L.S	221	2.6		503	7.4	13	36.9
	1,056	9.6	N.N	277	4.1		354	8.5	400	15.0
	1,764	9.6	N.S	446	5.5		851	9.4	445	12.6
	884	7.2	WI.E	176	4.4		682	7.6	13	15.5
	461	5.2	WI.W	98	2.8		174	3.7	177	9.0
	10,373	7.8		3,751	3.2		5,298	9.6	1,126	15.0
	1,307	14.2	AR.E	400	10.2		874	15.7	4	-
	677	11.6	AR.W	36	6.1		603	11.5	18	32.0
8TH	346	7.9	A.N	71	4.6		270	8.4	1	-
	505	10.4	A.S	127	4.2		232	8.7	128	14.9
	3,470	4.2	MN	1,550	2.0		982	3.9	920	14.5
	1,661	7.5	MO.E	733	5.0		880	9.2	2	-
	1,470	6.9	MO.W	685	4.4		742	9.4	15	19.0
	558	8.7	NE	47	2.2		462	8.6	25	16.0
	136	10.2	ND	23	7.8		110	10.3	1	-
	243	11.9	ND	79	10.6		143	11.5	12	31.7
	206	26.3		206	26.3		206	26.3	206	26.3

Table C-5. (June 30, 2010—Continued)

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
9TH	31,465	7.2	8,826	5.0	19,742	7.5	2,449	13.1	448	21.3
AK	276	7.6	112	5.1	155	8.9	1	-	8	-
AZ	2,265	7.0	203	3.0	1,984	7.3	36	21.2	42	28.6
CAN	5,719	10.4	842	4.4	3,491	11.9	1,343	12.7	43	26.1
CA,E	2,820	7.9	1,084	6.3	1,674	8.9	29	28.0	33	28.1
CAC	10,525	5.6	3,797	4.8	6,435	5.9	140	15.6	153	18.4
CA,S	2,137	6.0	248	3.0	1,274	4.8	597	11.1	18	34.5
HI	532	8.9	296	7.2	159	9.0	54	21.0	23	17.2
ID	397	10.6	43	2.4	287	10.7	58	14.6	9	-
MT	405	9.1	153	6.5	156	8.0	88	15.0	8	-
NV	2,099	7.8	637	6.7	1,393	8.2	50	9.4	19	24.4
OR	1,601	10.5	472	7.4	1,066	11.4	8	-	55	22.8
WAE	474	9.9	174	6.3	267	10.4	26	14.0	7	-
WA,W	2,173	6.7	735	3.9	1,396	7.9	12	7.6	30	16.9
GUAM	10	7.3	4	-	3	-	3	-	-	-
NMI	32	9.6	26	8.7	2	-	4	-	-	-
10TH	7,816	8.1	1,746	4.6	4,840	7.9	1,067	12.7	163	21.4
CO	2,218	5.9	280	2.4	1,788	6.0	108	19.2	42	28.2
KS	1,178	8.7	426	5.2	618	9.5	106	18.1	28	17.7
NM	1,055	9.0	405	5.8	395	9.9	227	12.0	28	23.2
OK,N	683	10.1	53	2.3	602	10.3	16	18.9	12	16.1
OK,E	366	9.8	218	10.0	133	9.4	11	11.0	4	-
OK,W	1,095	8.1	297	3.3	323	5.9	452	10.7	23	15.1
UT	1,016	8.5	47	6.9	914	8.0	41	18.7	14	30.6
WY	205	9.0	20	2.4	67	5.3	106	10.9	12	19.2
11TH	23,773	6.7	3,647	1.9	18,103	7.0	1,665	12.0	338	19.1
AL,N	2,913	14.3	318	8.5	2,551	16.0	16	19.4	28	22.8
AL,M	667	8.5	107	5.3	510	8.4	40	19.2	10	17.6
AL,S	558	7.0	151	5.3	379	7.2	14	18.3	14	18.3
FL,N	1,074	8.2	24	2.4	1,018	8.2	16	12.0	16	12.5
FL,M	6,243	7.7	422	4.4	5,597	7.7	136	17.6	88	21.8
FL,S	7,789	3.7	1,967	1.4	5,544	4.9	156	10.3	122	15.4
GA,N	3,409	6.7	352	2.0	1,727	4.6	1,290	11.0	40	23.8
GA,M	668	10.1	179	6.5	477	11.3	6	-	6	-
GA,S	452	8.5	127	6.0	300	7.9	11	19.5	14	22.8

NOTE: Median time intervals are not computed when fewer than 10 cases reported. This table excludes land condemnations, prisoner petitions, deportation reviews, recovery of overpayments, and enforcement of judgments. Includes cases filed in previous years as consolidated cases that thereafter were severed into individual cases. For fiscal years prior to 2001, this table included data on recovery of overpayments and enforcement of judgments.



TRANSPORTATION

TARIFF CSXT 8100

SECTION I-C
LIST OF INDUSTRIES

10th REVISED PAGE I-C-8
CANCELS 9th REVISED PAGE I-C-8

INDUSTRY	ADDRESS	CITY / STATE
BUFFALO, NY and Adjacent Stations		
CSXT does not perform Reciprocal Switching for the CPRS		
For explanation of Reference Marks see last page of Buffalo, NY List of Industries		
ADM Milling	1 st Clair Street (Standard Elev) 250 Ganson Street	Buffalo, NY
American Axle Manufacturing (Note 1)	1001 E. Delavan Avenue	Buffalo, NY
American Axle Manufacturing (Konananda Forge)	2390 Kenmore Road	Harriet, NY
Armor Box, Inc.	1755 Elmwood Avenue	Buffalo Black Rock, NY
Ashland Chemical Co.	3701 River Road	Harriet, NY
Bison Laboratories	100 Leslie Street	Buffalo, NY
BOC Gases	101 Katherine Street	Buffalo, NY
Buffalo Evening News	1 News Plaza	Buffalo, NY
Buffalo Merchandise Distributors	261 Great Arrow Avenue	Buffalo Black Rock, NY
Buff Tech	2525 Walden Avenue	Buffalo, NY
Deltacraft Paper Co., Inc.	99 Budmill Drive	Buffalo, NY
Dupont, EI	River Road & Sheridan Avenue	Harriet, NY
Eighty Four Lumber, Tonawanda	2286 Military Road	Buffalo Black Rock, NY
Federal Bakers Supply	1400 William Street	Buffalo, NY
FMC Corporation	River Road	Harriet, NY
General Electric	175 Milens Road	Buffalo Black Rock, NY
Kraft Foods	243 Urban Street	Buffalo, NY
Regional Integrated Logistics formerly Frontier Warehousing	2321 Kenmore Avenue	Harriet, NY

Note 1 – The sidetrack serving this American Axle Manufacturing Facility has a capacity of eight cars that cannot be extended. The facility is normally switched once a day, five days per week. American Axle Manufacturing has advised CSXT that it anticipates an increase in shipments at this facility, and has asked CSXT to switch the facility twice a day, five days per week. Until otherwise advised, CSXT has agreed to this request, subject to the condition that an average of not less than nine of the railcars tendered by American Axle Manufacturing on a daily basis shall be for CSXT linehaul service and not for reciprocal switching.

ISSUED AUGUST 23, 2007

EFFECTIVE AUGUST 24, 2007

CSX TRANSPORTATION
Marketing Services
6737 Southpoint Drive South
Jacksonville, FL 32216



TRANSPORTATION

TARIFF CSXT 8100

CSXT 8100

4th REVISED PAGE I-D-4
CANCELS 3rd REVISED PAGE I-D-4

SECTION I-D
LIST OF INDUSTRIES

INDUSTRY	ADDRESS	CITY / STATE
BUFFALO, NY and Adjacent Stations		
CSXT does not perform Reciprocal Switching for the CPRS		
ADM Milling	1 Clair Street (Standard Elev) 250 Ganson Street	Buffalo, NY
American Axle Manufacturing (Note 1)	1001 East Delavan Avenue	Buffalo, NY
Ashland Chemical Co.	3701 River Road	Harriet, NY
Bison Laboratories	100 Leslie Street	Buffalo, NY
Del Monte Foods	243 Urban Street	Buffalo, NY
Deltacraft Paper Company, Inc.	99 Budmill Drive	Buffalo, NY
Dupont, E I	River Road & Sheridan Avenue	Harriet, NY
Eighty Four Lumber	2286 Military Road	Buffalo Black Rock, NY
(B) Federal Baking Supply	1400 William Street	Buffalo, NY
FMC Corporation	355 Sawyer Avenue	Harriet, NY
General Electric	175 Milens Road	Buffalo Black Rock, NY
General Mills, Inc.	54 South Michigan Avenue	Buffalo, NY
Gerdau Ameristeel Buffalo	776 Ohio Street	Buffalo, NY
GM PT Tonawanda Engine River	2995 River Road	Harriet, NY
Goodyear Dunlop Tires North America, Ltd.	10 Sheridan Drive	Harriet, NY
Great Lakes Paper	441 Ohio Street	Buffalo, NY
Interstate Brands Corporation	313 Fougerson Street	Buffalo, NY
Linde, Inc.	101 Katherine Street	Buffalo, NY
Luvata Buffalo, Inc.	70 Sayre Street	Buffalo Black Rock, NY
Minnesota Mining & Mfg. Company	305 Sawyer Avenue	Harriet, NY
Praxair, Inc.	East Park & Woodward	Buffalo Black Rock, NY
Protective Closure	2150 Elmwood Avenue	Buffalo, NY
Regional Integrated Logistics	2321 Kenmore Avenue	Harriet, NY
Safety Kleen	60 Katherine Street	Buffalo, NY
Sonwil Distribution Center	100 Sonwil Drive	Buffalo, NY
Tonawanda Coke (Note 2)	3875 River Road	Harriet, NY
Worldcolor	2475 George Urban Boulevard	Buffalo, NY

(B) -- Cancel

Note 1 -- The sidetrack serving this American Axle Manufacturing Facility has a capacity of eight cars that cannot be extended. The facility is normally switched once a day, five days per week. American Axle Manufacturing has advised CSXT that it anticipates an increase in shipments at this facility, and has asked CSXT to switch the facility twice a day, five days per week. Until otherwise advised CSXT has agreed to this request, subject to the condition that an average of not less than nine of the railcars tendered by American Axle Manufacturing on a daily basis shall be for CSXT linehaul service and not for reciprocal switching.

Note 2 -- Applicable Only On:

- A. Outbound shipments of Coal Tar (STCC 29 116 34)
- B. Outbound shipments of Coke (STCC 29 914 10) when delivered in interchange to CN at Buffalo, NY

ISSUED APRIL 8, 2010

EFFECTIVE APRIL 9, 2010

CSX TRANSPORTATION
Marketing Services
6737 Southpoint Drive South
Jacksonville, FL 32216

Exhibit 4



CSXT 8100

1st REVISED PAGE I-C-3
Cancels ORIGINAL PAGE I-C-3

SECTION I-C
LIST OF INDUSTRIES

INDUSTRY	ADDRESS	CITY / STATE
ATLANTA, GA and ADJACENT STATIONS 22 -7		
Addison-Rudesal Co., The	1425 Ellsworth Industrial Drive NW	Atlanta, GA
Archer Daniels Midland Co.	818 Ashby Street NW	Atlanta, GA
Atlanta Intercell Co.	1240 Stewart Avenue SW	Oakland City, GA
Atlanta Journal, The	72 Marietta Street NW	Atlanta, GA
(4) Atlanta Service Warehouse	1365 English Street NW	Howells Transfer, GA
Bremar Steel Co.	1635 Marietta Road NW	Atlanta, GA
Central Metals Co. Recycling Industries of Atla	950 Marietta Street NW	Atlanta, GA
Davidson - Kennedy Co.	1090 Jefferson Street NW	Atlanta, GA
(4) Dittler Brothers, Inc.	1375 Seaboard Industrial Boulevard NW	Howells Transfer, GA
(4) Dixie Iron & Metal Co.	80 Milton Avenue SE	Ormewood Station, GA
(N) Edwards Baking Co.	285 Mayson Avenue NE	Atlanta, GA
(4) Flint Ink Corp.	2260 Defoor Hills Road NW	Howells Transfer, GA
(4) Maryland Baking Co. Lafarge Building Mat	951 Glenwood Avenue SE 885	Ormewood Station, GA
(4) Mead Corporation	950 West Marietta Street NW	Atlanta, GA
(4) Mooradian Pulpwood & Timber	1290 Sylvan Road SW	Ormewood Station, GA
(4) Nottingham Co.	1303 Boyd Avenue	Howells Transfer, GA
(4) Stein Steel & Supply Co.	9334 Kirkwood Avenue SE	Ormewood Station, GA
(4) Stetachi Brothers Stores Inc.	650 Hamilton Avenue SE	Ormewood Station, GA
(4) Tri-State Tractor Co.	880 Confederate Avenue SE	Ormewood Station, GA
(4) Weyerhaeuser Co.	1270 Tocomo Drive NW	Atlanta, GA
(4) Whitaker Oil Co.	1557 Marietta Road NW	Atlanta, GA
(4) Williams Brothers Concrete Co.	934 Glenwood Avenue SE	Ormewood Station, GA
ATTALLA, AL		
See Alabama City, AL and adjacent stations		

(N) - NO CHANGE

(4) - See (4) Reference Marks Section

ISSUED JULY 6, 2000

EFFECTIVE JULY 7, 2000

CSX TRANSPORTATION
Marketing Services - Price Management
500 Water Street
Jacksonville, FL 32202



TARIFF CSXT 8100

CSXT 8100

ORIGINAL PAGE I-D-2

SECTION I-D
LIST OF INDUSTRIES

INDUSTRY	ADDRESS	CITY / STATE
AKRON, OH		
Holub Iron & Steel Company	470 North Arlington Street	Cleveland, OH
Schulman A, Inc.	790 East Tallmadge Avenue	Akron, OH
ATLANTA, GA and ADJACENT STATIONS		
Archer Daniels Midland Company	818 Joseph East Lowery Boulevard	Atlanta, GA
Atlanta Intercell Company	1240 Stewart Avenue SW	Oakland City, GA
(4) Lafarge Building Materials	885 Glenwood Avenue SE	Ormewood Station, GA
(4) Meadwestvaco Corporation	1040 West Marietta Street NW	Atlanta, GA
(4) Nottingham Company	1303 Boyd Avenue	Howells Transfer, GA
Recycling Industries of Atlanta	950 Marietta Street NW	Atlanta, GA
(4) Whitaker Oil Company	1557 Marietta Road NW	Atlanta, GA
AUGUSTA, GA		
(4) Boc Gases	1407 Columbia Nitrogen Drive	Augusta, GA
Boral Bricks, Inc.	1630 Arnhem Road	Augusta, GA
Carboric Industries Corporation	23 Columbia Nitrogen Drive	Augusta, GA
DSM Chemicals North America	1 Columbia Nitrogen Drive	Augusta, GA
Fürst McNess Company	980 Molly Pond Road	Augusta, GA
General Chemical Corporation	1580 Columbia Nitrogen Drive	Augusta, GA
(4) Howard Lumber Company	475 Columbia Industrial Boulevard	Augusta, GA
Lafarge Building Materials	109 Laney Walker Boulevard	Augusta, GA
PCS Sales (USA), Inc.	23 Columbia Nitrogen Drive	Augusta, GA
Praxair, Inc.	1479 Columbia Nitrogen Drive	Augusta, GA
RBW Logistics Corporation	1425 Lovers Lane	Augusta, GA
Smurfit-Stone Container Enterprises	1311 Walker Street	Augusta, GA
Sweetheart Cup Corporation	1550 Wrightsboro Road	Augusta, GA
(4) Van Waters & Rogers	1455 Columbia Nitrogen Drive	Augusta, GA

(4) – See (4) Reference Marks Section

ISSUED JANUARY 10, 2008

EFFECTIVE JANUARY 11, 2008

CSX TRANSPORTATION
Marketing Services
6737 Southpoint Drive South
Jacksonville, FL 32216

Exhibit 6



GRUPPO MOSSI & GHISOLFI

M&G Selects Corpus Christi, Texas as the site of its 1 million ton PET and 1.2 million ton PTA plants

Expects to create 250 new jobs at plants, approximately 3,000 jobs anticipated during construction

HOUSTON - July 11, 2011 - M&G Group, the largest producer of PET for packaging applications in the Americas has selected Corpus Christi, Texas, as the location for construction of its previously announced one million tons per year PET plant (2.2 billion pounds) and accompanying 1.2 million tons per year (2.6 billion pounds) PTA plant. The new plants will generate approximately 250 new jobs. An additional 700 indirect positions are anticipated and as many as 3,000 jobs likely will be created during construction.

The new PET single line plant will employ the same technology as M&G's single reactor Suape (Brazil) PET plant, including M&G's revolutionary EasyUp™ SSP technology. Corpus Christi, Texas, is located 200 miles southwest of Houston, Texas, and 145 miles east of Laredo, Texas. It is strategically located on the Gulf of Mexico with a metropolitan population over 400,000. The Port of Corpus Christi is the sixth largest port in the United States, in terms of tonnage, and will soon expand significantly as a major trade gateway for Mexico and Latin America with development of the La Quinta Container Terminal.

"Corpus Christi is an excellent strategic home for what will be M&G's largest-ever investment. It has exceptional highway, deep-water and rail access, including three Class 1 railroads," said Marco Ghisolfi, CEO of M&G's Polymers Business Unit.

"I'm pleased M&G Group has chosen Corpus Christi as the location of its new North American plant, creating hundreds of jobs for Texans and further strengthening our state economy, and wish them continued success at this new facility," said Governor Rick Perry of Texas. "This announcement is great news for South Texas and for the Lone Star State as we continue to attract companies from around the world to create jobs in Texas thanks to our low taxes, reasonable and predictable regulatory climate, fair legal system and skilled workforce."

"It was not only Corpus Christi's Regional Economic Development Corporation and Governor Perry's Economic Development & Tourism Division's aggressive business-friendly approach in attracting M&G to Texas that weighed heavily in making the location decision, but also the service and supply efficiencies resulting from the presence of six refineries and Paraxylene production in the area, as well as the excellent port infrastructure that allows the benefit of having marine access to most of the PTA/PET facility's key raw materials, Paraxylene, Acetic Acid and Ethylene Glycol," added Ghisolfi.

Forbes has ranked Corpus Christi in the top 25 percent of the large metropolitan areas for low costs of doing business. The area is populated by a highly skilled workforce in petrochemical, heavy fabrication, water transport and aerospace. Moody's Economy.com ranked Corpus Christi in the best 20 percent of metropolitan areas for low workforce costs.

"We are very proud that M&G Polymers has selected Corpus Christi as the location of its new industrial facility. It brings new investment, new jobs and new opportunities for growth, both upstream and downstream, in our local industry," said Mayor Joe Adame, City of Corpus Christi.

Corpus Christi Regional Economic Development Corporation anticipates direct and indirect payroll resulting from the new plants to reach \$780 million over 10 years and expects total economic impact of the new plants on Corpus Christi to be \$4.8 billion during that same time.

Roland Mower, CEO of Corpus Christi's Regional Economic Development Corporation, responded to the good news: "Corpus Christi Regional Economic Development Corporation is pleased to welcome M&G Polymers to the Coastal Bend Region. They will be able to leverage superior logistics optionality and the many benefits of our industrial infrastructure."

Construction time for both the PET and PTA plants is estimated to be 30 months. The engineering, project management, sourcing and construction management will be performed by Chemtex Global S.A., a subsidiary company of the M&G Group.

About M&G Group

M&G Group is a family owned chemical engineering and manufacturing group headquartered in Tortona, Italy. M&G Group operates in the PET resin industry through its wholly-owned holding company Mossi & Ghisolfi International S.A. (M&G International). M&G International is presently the largest producer of PET resin for packaging applications in the Americas, with a production capacity in 2010 of approximately 1.6 million tons per annum.

Chemtex, the R&D and engineering arm of the M&G Group, has built the two largest PET plants in the world, both owned by M&G (Suape, Brazil, and Altamira, Mexico). Chemtex has wide EPC experience and has been involved in several PTA projects with different technologies. Chemtex, which employs over 1,000 engineers, has also developed a revolutionary technology for the production of simple and clean sugars from biomasses. A large industrial demonstration plant is being built in Italy (40kt/year of ethanol, start-up Q2 2012).

Media Contact:

Marybeth Roberts
Porter Novelli
760-294-6958
marybeth.roberts@porternovelli.com